

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

ROGER GODWIN,

Plaintiff,

v.

BELINDA SCHRUBBE,
CHARLES LARSON,
MARK (last name unknown), and
RICK RAEMISCH,

Defendants.

ORDER

07-C-208-C

In this civil action plaintiff Roger Godwin contends that defendants violated his Eighth Amendment rights by failing to treat his back problems. Defendants answered plaintiff's complaint on June 18, 2007. On July 23, 2007 plaintiff filed a motion for voluntary dismissal and I ordered that defendants respond to the motion, but plaintiff withdrew the motion before a response was filed. Now, plaintiff has filed a second motion for voluntary dismissal under Fed. R. Civ. P. 41.

When a motion for voluntary dismissal is filed after the defendants have filed an answer such as in this case, Rule 41(a)(2) provides that the action may be dismissed by the

plaintiff "only upon order of the court and upon such terms and conditions as the court deems proper." I recognize that defendants have answered the complaint and that a pretrial conference has been held, but the case is still in the early stages of the lawsuit. Also there is no indication in the record that the parties have begun the discovery process or filed any dispositive motions. Therefore, I will grant plaintiff's motion for voluntary dismissal without prejudice unless defendants object to such a dismissal and explain how they will be prejudiced by it.

ORDER

IT IS ORDERED that defendants may have until October 22, 2007, in which to advise plaintiff and the court of their objection, if any, to a dismissal of this action without prejudice. If by October 22, 2007 defendants do not object to such a dismissal, the clerk of court is directed to enter a judgment of dismissal without prejudice.

Entered this 15th day of October, 2007.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge